

Act 1992 No. 100

FIRST STATE SUPERANNUATION BILL 1992*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The State Authorities Superannuation (Scheme Closure) Amendment Bill 1992 and the Superannuation Legislation (Superannuation Guarantee Charge) Amendment Bill 1992 are cognate with this Bill.

The object of this Bill is to establish a new superannuation scheme for certain employees in the public sector. The new scheme:

- (a) will provide the minimum level of cover under the Superannuation Guarantee Charge (Administration) Act 1992 of the Commonwealth and associated Commonwealth legislation; and
- (b) will also provide optional additional cover.

PART 1—PRELIMINARY

Clause 1 specifies the title of the proposed Act.

Clause 2 provides that the proposed Act commences, on the date of assent.

Clause 3 provides that certain words and expressions used in the proposed Act are defined in the Dictionary at the end of the proposed Act.

Clause 4 provides that matter contained in notes does not form part of the Act.

* Amended in committee—see table at end of volume.

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PART 2—MEMBERS OF THE SCHEME

Clause 5 specifies the employees who are to be members of the First State Superannuation Fund (“the Fund”). Provision is also made for other employees covered by other pre-existing public sector superannuation schemes to elect to become members of the Scheme and to make voluntary employee contributions to the Fund

Clause 6 specifies the employers to whom the proposed Act applies. These include the Crown, the government or a Minister of the Crown and the authorities listed in Schedule 1 to the proposed Act.

Clause 7 allows the Governor by order published in the Gazette to amend Schedule 1 to the proposed Act (the schedule of employers).

Clause 8 gives effect to Schedule 2 to the proposed Act which sets out the persons who are not automatically members of the Fund. These are employees who are members of other superannuation schemes in respect of the same contract of employment and certain officials. The clause also allows the Governor by order published in the Gazette to amend Schedule 2.

Clause 9 provides that the Act does not apply to employees aged 65 or over unless they were, immediately before the commencement of the Act, employees under the State Authorities Non-contributory Superannuation Act 1987.

Clause 10 enables an employer to notify the Board if the employer pays contributions in respect of the employee under the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth. The employee is required to give written notice to the State Authorities Superannuation Board (“the Board”) of the arrangement and also to advise the Board if the arrangement ceases. An employee is not a member while such an arrangement is in force.

Clause 11 requires the Board to provide members of the First State Superannuation Scheme (“the Scheme”) with information with respect to the Scheme as required by Commonwealth standards relating to occupational superannuation.

PART 3—CONTRIBUTIONS TO THE SCHEME

Division 1—Contributions by employers

Clause 12 makes employers liable to pay compulsory contributions which are payable to the Board by the employer in respect of members employed by the employer (other than members who are members only for the purpose of making optional contributions). The levels of contributions are based on a certain percentage of the salary or wages of a member for the relevant financial year, as specified in the Table to the proposed section.

Clause 13 provides for the payment of the compulsory premium for the basic death or invalidity benefit in respect of a member out of compulsory contributions by the employer. This clause does not apply to members who are members only for the purpose of making optional contributions.

Clause 14 empowers the Board to determine the amount of the basic death or invalidity premium in respect of a member.

Clause 15 enables an employer to make optional contributions to the Fund in respect of a member.

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Clause 16 enables the Board to make rules as to the timing of and the manner of payment of contributions by employers.

Division 2—Contributions by employees

Clause 17 provides for an election by a member or an employee to contribute to the Fund.

Clause 18 specifies when such an election takes effect.

Clause 19 enables the Board to make rules as to the timing and the manner of payment of contributions by employees.

Division 3—Variation of contributions

Clause 20 enables a member to elect to vary the contributions required to be paid by the member or the optional contributions payable by the employer in respect of the member or both.

Division 4—Contributions for additional death or invalidity cover

Clause 21 entitles a member, whose employer makes compulsory employer contributions to the Fund, to apply to be covered for the additional death or invalidity benefit.

Clause 22 makes provision with respect to applications to be covered for the additional death or invalidity benefit.

Clause 23 enables the Board to require an applicant for the additional death or invalidity benefit to submit to a medical examination or examinations or to provide such other information as may be specified by the Board.

Clause 24 allows the Board to approve, approve with variations or refuse an application for the additional death or invalidity benefit if the Board thinks fit, if the applicant fails the medical examination or the applicant fails to comply with any other requirements of the Board under this Division.

Clause 25 establishes an approved member's liability to pay the additional death or invalidity premium determined by the Board. The Board is empowered to make rules as to the timing of the payment of such premiums.

Clause 26 enables a member who is covered for the additional death or invalidity benefit to cease to provide for such cover if the member notifies the Board of his or her intention to cease to contribute for the cover. The clause also provides that a member is not entitled to a refund of any premiums paid for the cover.

Clause 27 allows the Board to revoke its approval of an application to be covered for the additional death or invalidity benefit if the approval was obtained by deceit. In deciding whether to revoke an approval, the Board may require a member to undergo a medical examination or examinations or to provide such information as may be specified by the Board.

Clause 28 provides that revocation of such an approval results in the cessation of the member's cover for the additional death or invalidity benefit and of the member's liability to pay the premium for that cover. The clause also provides that a member is not entitled to a refund of any premiums paid for the cover.

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Clause 29 empowers the Board to make rules as to certain matters concerning applications for the additional death or invalidity cover.

PART 4—BENEFITS

Division 1—Amount of benefit

Clause 30 specifies that the benefit payable to a member is the balance at credit in the member's account at the time of payment of the benefit. (The balance may be reduced as a result of action taken by the Board under clause 33).

Clause 31 specifies the method for calculating the basic death or invalidity benefit payable to a member.

Clause 32 provides that the additional death or invalidity benefit payable to a member is the amount nominated by the member and approved in approving the application for cover.

Clause 33 empowers the Board to reduce any benefit payable to a member under the proposed Act where the Board would otherwise be liable to a penalty under a Commonwealth taxation law because the benefit, or total benefits, received by the member (under this or any other scheme) would exceed a level specified by Commonwealth standards relating to occupational superannuation.

Clause 34 allows the Board to pay interest, at its discretion, on benefits paid under the proposed Act.

Division 2—Payment of benefits

Clause 35 specifies the circumstances in which a benefit is immediately payable to a member.

Clause 36 specifies the circumstances in which the basic or the additional death or invalidity benefit is payable.

Clause 37 sets out the matters about which the Board must be satisfied before a benefit is to be paid to a member on cessation of employment on the ground of permanent incapacity or permanent invalidity.

Clause 38 makes provision for the preservation of a benefit not otherwise payable under the proposed Act.

Clause 39 specifies the circumstances in which a preserved benefit is payable.

Division 3—Other provisions relating to benefits

Clause 40 empowers the Board to make rules with respect to other provisions relating to benefits payable under the proposed Act including, for example, the circumstances in which employees other than full-time employees are taken to have ceased to be employed for the purposes of the proposed Act.

Clause 41 enables a member or former member to require the Board to use the benefit or part of a benefit which has become payable to or in respect of that member or former member for the purchase of an annuity or other form of pension.

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Clause 42 specifies the circumstances in which the Board may pay a benefit otherwise than in the form of a lump sum.

Clause 43 provides for the payment of a benefit in respect of a member who has died.

Clause 44 provides for payment, in the event of the death of a member or former member, of a benefit without a grant of probate or letters of administration or in anticipation of a claim under the Family Provision Act 1982.

Clause 45 provides for the payment of a benefit where the beneficiary is incapable of administering his or her own affairs.

Clause 46 renders void any purported assignment of, or charge over, a benefit payable under the proposed Act, but enables payments to be made by the Board in accordance with a request made by a beneficiary.

Clause 47 enables an employee to elect (on becoming a member or at any later time) to transfer a benefit received or any money held to the credit of the employee under another complying superannuation scheme or approved deposit fund into the employee's account or proposed account in the Fund. Provision is also made for the making of such an election.

PART 5—THE FIRST STATE SUPERANNUATION FUND

Clause 48 requires the Board to establish and maintain the First State Superannuation Fund.

Clause 49 sets out the amounts that are to be paid to the Fund.

Clause 50 sets out the amounts that are to be paid from the Fund

Clause 51 requires the Board to establish and maintain an account within the Fund for each member.

Clause 52 sets out the amounts that are to be credited to a member's account.

Clause 53 sets out the amounts that are to be debited to a member's account.

Clause 54 requires the Board to establish and maintain a Death or Invalidity Management Reserve and sets out the amounts that are to be paid to and from the Reserve.

Clause 55 empowers the Board generally to establish and maintain accounts and reserves and also empowers it to create particular investment funds comprising particular members' accounts.

Clause 56 provides for the adjustment of accounts and reserves by the Board and permits the Board to fix different rates for members' accounts in different investment funds.

Clause 57 is a general enabling provision for credits or debits to funds, accounts or reserves established by or under the proposed Act.

Clause 58 requires the Board to establish and maintain a First State Superannuation Management Account.

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Clause 59 sets out the costs that are required to be charged against that Account and the way in which those costs are to be paid

Clause 60 sets out how other management costs incurred by the Board may be paid.

Clause 61 requires the Board to deduct amounts equivalent to its income tax liabilities from members' accounts.

PART 6—MISCELLANEOUS

Clause 62 provides that when an employer is removed from Schedule 1 the employees are taken to have ceased to be employed by an employer, The proposed section makes provision for a preserved benefit in that event.

Clause 63 requires employers to submit information relating to employees if required to do so by the Board.

Clause 64 requires employees or claimants to provide the Board with specified information or evidence or to undergo a medical examination or examinations if required to do so by the Board.

Clause 65 sets out the circumstances in which the Board may require employees or claimants to provide specified information or evidence or to undergo a medical examination or examinations.

Clause 66 sets out the consequences for employees or claimants if there is a failure to comply with a requirement of the Board to provide information.

Clause 67 provides generally for the making of applications, elections, requests or notifications under the proposed Act.

Clause 68 provides time limitations on making elections and applications.

Clause 69 gives the Board a discretion to accept elections or applications made out of time.

Clause 70 provides generally for the taking of effect of elections and applications.

Clause 71 provides generally for the amendment or revocation of elections or applications.

Clause 72 sets out the powers of the Board to recover money owing to the Fund, including a power to require deductions to be made from a member's salary.

Clause 73 sets out the circumstances in which the Board may consent to the exercise by a person of a right or the enjoyment of a privilege under the proposed Act which the person has ceased to be entitled to exercise or enjoy.

Clause 74 sets out the general rule making power of the Board.

Clause 75 sets out the regulation making power.

Clause 76 is a formal provision giving effect to Schedule 3 which contains savings, transitional and other provisions.

Clause 77 is a formal provision giving effect to Schedule 4 which contains amendments to the Superannuation Administration Act 1991 consequential on the enactment of the proposed Act and for other purposes.

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Clause 78 requires the Minister to review the Act after 5 years from the date of assent to the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

SCHEDULE 1—EMPLOYERS

This Schedule specifies the authorities which are employers for the purposes of the proposed Act.

SCHEDULE 2—EMPLOYEES WHO ARE NOT MEMBERS OF THE FUND

This Schedule specifies persons who are not automatically members of the Fund.

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Clause 1 contains a power to make regulations containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Clause 2 makes a transitional provision with respect to the calculation of benefits payable under the proposed Act to members who are covered for certain benefits under the public sector non-contributory superannuation scheme (established by the State Authorities Non-contributory Superannuation Act 1987).

SCHEDULE 4—AMENDMENT OF SUPERANNUATION ADMINISTRATION ACT 1991

This Schedule makes amendments to the Superannuation Administration Act 1991, some of which are consequential on the enactment of the proposed Act.

Schedule 1 (1) includes the proposed Act in the definition of “associated Acts”.

Schedule 1 (2) makes a consequential amendment.

Schedule 1 (3) inserts new section 10A in the Superannuation Administration Act 1991. New section 10A sets out the timetable according to which the Board is to seek and consider tenders for the carrying out of the Board’s functions with respect to the administration of the First State Superannuation Scheme and the investment and management of the First State Superannuation Fund and enables the Minister to extend that timetable.

Schedule 1 (4) empowers the Board to employ staff under the Public Sector Management Act 1988 to provide certain services to the Board

Schedule 1 (5) allows the Board to delegate certain of its functions relating to the administration of certain superannuation schemes to persons with whom the Board has entered into contracts or arrangements.

Schedule 1 (6) allows the Board to recover administration costs in respect of preserved benefits under the proposed Act.

Schedule 1 (7) amends the definition of “business undertaking” in existing section 30 of the Superannuation Administration Act 1991 by excluding from the definition contracts or arrangements entered into by the Superannuation Investment and Management Corporation under new section 10A of the Superannuation Administration Act 1991.

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Schedule 1 (8) removes the requirement for the State Superannuation Investment and Management Corporation to obtain the approval of the Board before the Corporation delegates any of its functions relating to superannuation schemes and superannuation funds established under associated Acts.

Schedule 1 (9) empowers the Board to resolve disputes arising under the proposed Act.

DICTIONARY OF WORDS AND EXPRESSIONS

The Dictionary defines certain words and expressions used in the proposed Act.
